App I IX 4

1925

File No 97-

Previous References
me 13 v3 & 13, v3 L27

Serial Nos.
9,12,1

Later References
~~LR 439-38 (1-4)~~
LR 194-38 — (1-4)
LS MDG-1-46

General and Revenue Secretariat.

Serial Nos

Part B for file 27

SUBJECT

Grant of license to Mr N Sundaram Iyer Shimoga, for ~~the~~ running the theatre Cinematograph Exhibition for Public Purposes (Cinematograph Exhibition)

---

15 To, The D C Shimoga
NDL 5444/d 6 2 27

States that the license may be granted temporarily on certain conditions and a telegram obtained in the matter

15/2/27

WD 01264—GPB—10,000 -17-12-25
[App. F III—2

General and Revenue

WD 01264—GPB—10,000 -17-12-25
[App. F III—2

General and Revenue Secretariat

Vol File No. 97 of 1925.

Serial No 6

From

Hee Deputy Commr. Shimoga Dstrct
No C 651/25-26 dy 22nd April 1926

Forwards a report for the vetoing of the resolution of the Building Committee of the Shimoga Municipal Council granting a licence to Mr Sundaram Iyer for constructing a pucca Theatre and forbidding the use of the temporary Theatre constructed by him as a place of amusement.

1)

In the Dy Commrs letter under disposal, the reasons for the prohibition of the use of the building constructed by Mr Sundaram Iyer as Theatre on the site in question are fully set-forth

They are briefly as follows:

1) that the locality is situated in the danger zone,

2) that the granting of licence is in defiance of the directions of Govt-land Powers in their order No R 1020 1225/R in 3 24 54 dy 8th August 1924,

3) that it is against the spirit of the resolution of the Municipal Council,

4) that it will affect the revenue of the Municipal Council,

5) that it will cause great injury

General and Revenue Secretariat

Vol File No. 97 of 1925

Serial No

to public health by allowing the ignorant people to assemble amidst unhealthy and unsanitary surroundings

Flag Z

2) The Municipal Council are themselves competent to exercise powers of revision over the actions of the Building Committee under Rule 1 of the Rules ~~framed~~ issued for the guidance of the Building Committee sanctioned in Govt Order No 1774/Mil 50-15 27 dy 7th Septr 1916 For this purpose, the Dy Comr is a member of Council and he can move the Council for such revision

3) The Dy Comrs action in prohibiting the use of this building constructed on the site in question as Theatre is in accordance with Section 174(1) of the Municipal Regulation and he was reported to Govt under Section 174(2), the facts of the case It is left to the discretion of the Govt under the same section to rescind the order of the Dy Comr or to direct that it continue in force with or without modification permanently or for such period as it thinks fit

4) Subd for orders The DC may be asked to be called upon his final report is awaited

5) K 3814/26 30/4/26

I th Secy) D/ 8/4 ~~proceed~~ the case of theatre inquiries

NOTE — Contn Sheet

Sheet

Serial No	
	1) The Govt can only entertain such an order passed by DC under sub-sec 2 of Sec 174 if not before
	2) Hence no formal order may be awarded
9360 Cq 5-	9) Dr Thr 3/5- 3/5-
	10) Rep/Mat has order under sub sec 2 of Sec 174 is awaited 5/5 5/5 2nd 5-
	11) Draft 5-5
	12) Draft reply to the Dy Comr subd for approval 6/5 26- Some 7 5 26
7	To The Deputy Comr. Shamoli Distt No L 6895/Rel dt 11th May 1925 With reference to 6 above that no order under Sub-Sections 2 of Section 174 of the Criminal Regulations, if any, is awaited

6261
6278

WD 01264—GPB—40,000—17-12-26

[App. F III—2

General and Revenue Secretariat

Jud File No. 97 of 1925

Serial No 9

From

The Dy Comr Chingleput Distt

No a c, 851/25 26 dt 15th March 1926

With reference to R 7 forwards a copy of his order issued under Section 174(1) of the Municipl Regulns

18

Subd with reference to para 10 of the note for orders

19/4

20/5 The Deputy Commissioner has passed orders under Section 174(1), as he is afraid of injury to the public health from the construction of a theatr temporarily or permanently on the site owned by Mr. Sundaram Iyer, the locality itself is said to have been condemned and another place is made available for such purposes. Ordinarily the power of Municipal Council themselves extend only to the prevention of buildings if they do not comply with the provisions relating to level, drainage, ventilation sanitation etc. (Vide Sections 92 to 98 of the Municipal Regulation) and not to the restriction of any place for being used for theatrical purposes. But under Section 149 of the said Regulation, in specially notified areas, special powers may be exercised by Municipal Councils for preventing the erection of any building for any of the circumstances specified in sub-Clauses (a) to (d) of Clause (1) Section 149 or pull down any building erected.

15 The Deputy Commissioner says that in Govt No.R.1020-1228/R.14.3-24-54 dated 8th August 19.. , Govt. have prohibited the issue of license by District Boards and Municipalities for rebuildin

NOTE—Contd. Sheet

Serial No

houses in flooded areas under which category the place selected by Mr Sundaram Iyer falls This may not be considered as a notification issued u Section 149 But it has to be recognised that the plac has been considered unsafe for human habitation and is also considered as injurious to the public that may gatner in the place if a theatre is allowed to be built therein The Deputy Commissioner perhaps considers that the Municipalit should have acted under this Section and prevente Mr. Sundaram Iyer from raising a theatre in the place and should not have issued any license

17 On the other hand, Mr Sundaram Iyer has presented an appeal petition against the order pas e by the Deputy Commissioner It is stated by him that the place was formerly used as workshop and converted into a theatre at the request of the pu lic, that there are roads on 3 sides and the surrounding area is inhabited by people that the Deputy Commissioner has seen the building in the course of construction in October 1925 and did no raise any objection that the District Medical Officer has approved of the theatre, that the work has been finished and the building used as theatr under license granted by the First Class Magistr though the license had to be suspended on account of plague cases in the town and in the vicinity o the building but the District Medical Officer has recommended withdrawal of the restriction and tha the Deputy Commissioner has unnecessarily stopped the issue of a license for using the same as

Serial No

theatre although the place is well suited to stage dramas on sanitary and other grounds and the action of the Deputy Commissioner has caused him substantial loss and injury and the Deputy Commissioner has not taken into consideration the legal consequences He has prayed for the grant of a copy of the Deputy Commissioner's report (which is being separately dealt with) and Govt might hear him or his counsel and also peruse the whole records in the case and order issue of a license

18 The First Member has asked whether an appeal lies to Govt legally in this case There is no regular appeal to Govt in such cases but as Govt has to pass orders, they may if considered necessary hear the petitioner and his counsel at their discretion

19 But Section 149 also lays down that if it is considered that the site should not be built upon the Municipal Council shall either have to acquire the site or place or prescribe such other conditions as may be deemed necessary as to the use which the owner may make thereof In this case even the building will have to be pulled down and suitable compensation granted by the Shimoga Municipal Council which may not be easily possible for them to do under their present financial condition

The attention of the Deputy Commissioner will perhaps have to be invited to the above circumstances and he may be enquired how he will meet the situation created by him and whether it is not possible to come to some arrangement with the appellant

General and Revenue Secretariat

Jud File No 97 of 1925

Serial No

asked to send complete records connected with case

25 Final orders upholding the orders of the Depu Commissioner may perhaps have to issue after the receipt of the above information

1058/ 9/6

L L Dey) 25/5/26

22 As the party so desirous of being heard to show may please have before passing Orders under Sec 17 (4)

8/6

23 Call for a further report from D.C on the petn & with Sp refce to A & whether D II approves of the [illegible]

10/6

24

11/6.

25

draft Rule

12 to 26

26 Mean [illegible]

[illegible]

L L Dey)

26/6.

3 Add

Sheet

WD 01264—GPB—40 000 [illegible]
[App. IV
III—2

General and Revenue Secretariat | ME File No 97 | 1925

Serial No 65

To, The Deputy Commissioner
Shimoga District
No L 42/d 6726
Requested to submit a full report on the statements contained in the petition of Mr. H Sundaram Iyer appealing against the order refusing the grant of license and report the final decision of the Municipal Council for information.

REVENUE SECTION
No A
27 JUL 1926
LOCAL SELF GOVT. BRANCH
DN 599

Letter no OC 651 of 25-26 dt 4/8/26 from the DC Shimoga, requesting to send the original or copy of his letter no OC 651/25-26 dt 17/2/26 & 26 Submitted for orders as to whether a copy or original of the letter referred to is to be sent. Draft No 1 also put up for approval

618

Copy may perhaps be sent

MG 618/26

32 L.D.Reg)

for 431/26

1620/1/8

Remarks

Seen and 1108 of 13/8/26 To Asst Secy Jag Person for Asst Secy to forward a copy of the letter referred

Memo—Contra Sheet

WD 0 264—(FB —40 000—1, 12 2.
App [illegible] III—2]

neral and Revenue Secretariat

Mt File No 97 of 1925

Serial No

No OC 65-1 dated 14/8/26 from the DC Shimoga
Submits the report called for and States
that he exercised the power of vetoing the
resolution of the Building Committee with the
best of intentions & in the interests of Public
Health & welfare
3) Please see paras 14-20 for the previous
history of the Case
Issues of final orders upholding the
decision of the DC Shimoga in regard to the refusal
of a licence for constructing a picture
theatre Etc was deferred pending receipt of
reply from the DC to the enquiry made
in this office No L 42/Mul 97-25-6806 7 26 764/
24) The DC was asked (1) to consider whether in case
the building should be pulled down the Mul
Cl would be prepared to pay compensation if any
claimed by the owner,
2) to Verify the allegation of Mr Sundaram Ayr
that the Demo has approved of the Scheme
3) to report what the effect of this would be
in the event of a Suit being filed -
35) The replies are -
(a) The present Cl Considering the Mul Cl does not
guarantee any Compensation being paid should the building
be demolished the DC does not think that the Mul Cl
intends to pull down the building -
(b) As the Building Committee exercise all the powers
of the Mul Cl in regard to the erection of Buildings the DC
does not propose to take up the Case before the Mul Cl

WD 01264—GPB—40,000—7-12-25
[App. F III—2

eneral and Revenue Secretariat | 2nd File No. 97 | of 192

Serial No

Flag Y

Question (2) — In his No 2050 97 11 25 the Dmo permitted the licence being issued to Mr [illegible] Sundaram Ayer subject to the following conditions:-

1) the precincts of the theatre should be cleared up of all undergrowth vegetation
2) the drains should be cleaned
3) the licence should be withdrawn for three months in the year during the flood season;
4) the stability of the building should be certified to be sound after a professional test independently after each flood season
5) Sanitary Urinals should be provided.

Flag Z

2) In his DO of 29/11/25 to the Spl First Class Magistrate the Dmo wanted his licence to play dramas in the theatre should be withdrawn during the plays season.

Flag A

Subsequently the Dmo [illegible] in his DO 10/12/25 stated that he had no objection to issue licence to enact dramas in the theatre the DC funds that the last DO of his 10th April from the DPO was sent up before the Dmo satisfied himself whether all the conditions imposed by him in his first certificate have been fully carried out. [illegible] a court in the first instance as the Dmo states that he passed the order suspending the demolition of the building [illegible] to forbade the use

9 2 the DC proposal

[illegible] analysed. Whatever

Serial No

the temporary theatre, not under sect 174 of the Mch Regs but on his capacity as the Bch of the Municipal under sect 174(1)

2nd Addn

18/8 34) The Bch of Municipality is necessary to place the matter before the Municipal as the building Committee to whom the Municipal have delegated their power of issuing licences. I have already issued licences; that it was pointed out to the Committee by the prescribed necessary Conditions, that the temporary structure now put up would not satisfy the sanitary requirements. that it will not be possible to satisfy the sanitary requirements in the Case. that the power of Bch has been exercised by him with the best of intentions in the interests of public health & welfare & that for the reasons given such orders as they deem fit.

40) Under sect 174(2) it shall be open to any person aggrieved by any order or decision that is Contravention of the provisions of Municipality or any such person as it thinks fit.

41) In the new draft Act Regulations under like circumstances there is a provision to that effect have been carefully analysed. Please see

Contr. Sheet 1 1

WD 01201—C I B—10000—27 12 25

General and Revenue Secretariat

2nd File No 57 of 192 5

Serial No

for appealing this Act a reasonable opportunity of stating their case (vide Sec 4 (2)) before first exercising their discretionary power It is not known whether such a course may not be followed in this case though such a provision is also one that Regulations of such order will have to be upheld till such period as the owner has complied with conditions ~~prescribed by the Local Authority for proof~~ required by this Act If it is established for a theatre or if it is to be used for any other purpose than this Act, is satisfied as to the purpose to which the building may be utilised

L R Reed

28/8

Army Council

41 The Act has expressed his powers under Sec 174 of the Municipal Reg —

He has given good reasons for refusing the action of the Municipal Council

42 For the reasons set forth in his letter the Govt Leave to Continue to order of 8 until the petitioners is willing to have a permanent structure as stated by Dist in para 12 of his 4 Dated 14 8 1926

Members

43 I am afraid that the case has not been as Please see

2631 9/9

21/11

1238/26

WDO 264—(PB—10000) 1/12/26

Appx II

neral and Revenue Secretariat

File No

of 1925

Serial No

As to ... whether the Govt Secy refd
that the GO of 24 was not under
Sec 149 — but in the letter to DC
the Secy, Govt stated that the GO
(Govt Secy, Govt means GO or what else?) was
under 149, and the DC now
Corporation not under 149 The DC
in his first letter states that
the probation order was made
the Police Regn (vide A page 4) &
in the end that he acted as DC
under Sec 174

There is sure to be a
law suit & if Govt upholds the
DC's damages will have to be
paid by Govt & not by the municy

The L. Secy will
please examine the case afsh
& note whether the GO of
24 has any legal force; whether
the Police Regn gives DC any powers,
& whether in view of the action of
the Municipal Council & of the Judgment
recton of ... in appeal Govt will have
a case if a Suit is filed

Sec
7/9

DS
7/9

Law
8/9

General and R venue

File No 77 of 192

Serial No

66 As regards 1st point raised G.O. of 1924, has it rank, legal effect It is not stated that notification should be published in the official Gazette Hence Gorbonder which has been published, may be taken to be a sufficient public notification of the intention of Govt

49 As regards 2nd point, see 48 of the Police Regs (one instance of it in to prohibit the issue of ~~an~~ a to ~~make rules~~ regulate the conduct of all assemblies etc —

Regarding 3rd point no such law against Govt under Regn VII of 1923

50 It may perhaps be possible to sue the parties & take action under sec 174 of the Municipal Regs if the party complies with the requirements mentioned on sanitary grounds but the order may not be noticed by the public member

51 Some Sevas Dharmas claim to temple & deed the part has ahead been heard & its practically on the D Comp with D.G's ments in the points on wh

M does not want a Crema to touch human feelings

WD 0192—GPB 37 500—1 9 26
App F III—2]

File No

of 192

Serial No

I wanted wfn an
53 III whether the QO was
cesned under the 149 Y
2d under what section of (Damages
view held in Court today)
(2) whether the 2d action
this case is under Police Regn as he
Lqs in one place, or under s. 174
(3) whether any decided case
stretching the meaning of regulations
under the under act 45 of Police Regn &
defining the structure a
building where public meeting
(3) The action to be taken by
for in summary manner Y
D C acted under Police Regn or
under Municl Regn. The
damages, & the A C in individually
can be & will be sued; Y
Govt have the resp Y Hence
matter has to be decided
the material available

Lee
28/9/26

3223/1869

keeper work

Lee

53 Law 2 dr) 2 I ?

54 I regret for the delay due to the
pressure of work
As it is a matter requiring
consideration, I have taken
time to study [illegible] the application
of Sec 174 of the Municl Act of any
provision of Police Regs under the
[illegible]

WD 0122[illegible]—GPB—37,000—1 9 26

App. F III—2]

General and Revenue Secretariat

ML File No 97 of 1925

Serial No

I have asked Plaudbelow by phone
1st number
19 11

5480
28/11

The Deputy wishes to
inspect this place during his
visit to Shimoga. The
file may be sent to H O
for reference during his tour.
Dr
28/11/26
29 11

AIV's OFFICE
1 DEC 1926
No. 3844

Branch
to write & post up in proper time 29 11 26

H O Dec
28
26 29/11

Ja
Ja
Ja

Mr

Mr
Shimoga
5.1.27

Mr
7-1

WD 01229—CPB—37 500—429 26

General and Revenue Secretariat

File No of 1925

Serial No

Sundaram Iyer & Co
Cst Thanjavur

AN S OFFICE.
Received on
1 FEB 1927
5183

To letter No GE 651/23-24 § 24.1.27 from the Dy Comr, Thanjavur

Request that the records may be returned to him for further action with such instructions as Govt may be pleased to issue in the matter

2 Draft returning the records to Subd for appl

3 As regards the instructions sought for by the Dy Comr it is not known what transpired in the personal discussions between the Dy Comr and the Dewan in the matter and the

31/1/27 S/Shree)

31/1

4 Submitted for Dewan's orders as to further action to be taken with reference to the Dy C's letter asking for instructions

Dewan

31/1

8217
2/2

Vide Dewan's orders on his D 30/1/27
Comr's letter dt

Mem 1/2/27
8/2

Order as to
Mem
2/2
8/2

Dy C/ Thanjavur

General and Revenue Secretariat

File No. 97 of 192[illegible]

Serial No.

Draft is put for orders.

3/2/27

LHR

27/2

Mr 3/2

27/2

15 To, The Deputy Commissioner. Shimoga

No L 5444 d/ 2-27

States that the prohibitory order may be withdrawn and that a temporary license may be issued to Mr Sundaram Iyer temporarily on the conditions specified herein and subsidiary obtained by the licensee in the matter.

[illegible]

Cor

-25-6

20

Confidential

OFFICE OF THE DEPUTY COMMISSIONER
SHIMOGA DISTRICT

No OC 657/25 26
& one file

Shimoga Dated the 17th April / 23rd *192*0

6017

24 APR 1926

From

A K Syed Taj Peeran Esq B A
Deputy Commissioner,
Shimoga District

B Nagappa Esq Bar-at-Law
Secretary to the Government of Mysore
Local & Legislative Departments
Bangalore

Sir,

I have the honour to submit the following report for the information of the Government under Section 274 (1) of the Municipal Regulation for the vetoing of the resolution of the Building Committee of the Shimoga Municipal Council granting a license to Mr Sundaram Iyer for constructing a pucca theatre and forbiding the use of the temporary theatre constructed by him as a place of amusement

2 The floods of the successive years of 1923 and 1924 had brought prominently to the notice of the public that certain low-lying localities in the Shimoga Town and its suburbs including the Big Brahmin Street Seegehatti and Kumbargundi are exposed to danger and that the last named locality and some parts of the Big Brahmin Street are inundated even during the ordinary floods

3 It is needless to narrate the havoc caused by the floods as they are quite fresh in the memory of one and all With a view to induce the public living in these localities to move to safer and healthier localities the Municipality

l - out extension in accordance with the instructions conveyed in the G C Io R 10-0-1428/R M 3-24-34 ated 8th August 1924 and a special Committee appointed by Government after inspecting the localities selected for forming extensions expressed their approval The Government with a view to create facilities for the people to build houses in the extensions sanctioned a handsome grant for giving loans through a Building Co-Operative Society to the sufferers and others They also sanctioned a free grant of Rs 20 000/- and a loan of Rs 40 000/- for improving those extentions and creating water facilities

4 In addition to the several sanitary improvements devised by the Municipality it was also decided to reserve a plot of ground near the Sagar Gate Square at an elevated spot open on all sides free from all contamination and unhealthy surroundings for amusement purposes such as staging dramas circus performances &c as they thought to be licensed for such purposes as hitherto

5 While matters stood thus a gentleman named Mr H Sundaram Iyer who is a Municipal Councillor and who was undoubtedly aware of the intentions of the Municipality and the resolution passed by them applied for a license to permit him to construct a pucca building for staging dramas on his sites situated close to the conservancy lane of the Big Brahmin Street and in my absence from Head Quarters secured a license from the Building Committee in accordance with his wishes It is interesting to know the various attempts made by Mr H Sundaram Iyer during the past four years for raising a building on these sites and several experiments made by him from time to time

6 In January 1921 he applied for a license for building a dwelling house and soon after it was granted he excavated foundations and constructed basement but the approach of floods soon convinced him that it would not be a sensible thing to invest a large sum of money on a house which may be swallowed at any time

He then in the year 1922 applied to the Municipality to permit him to construct a temporary structure for storing sawn timber This license was also granted Finally he applied on the 12th September 1925 to grant him a license for raising a pucca theatre house In this application it is seen that first he wanted permission to run up a temporary zinc shed but on a second thought he scored it and wrote over it that he should be authorised to construct a permanent building for staging dramas &c The Building Committee without a giving moment's thought to the resolution of the Council and in utter disregard of the directions of the Government, granted a license giving two months' time for completing the building It is easy to make out that Mr Sundaram Iyer who is a shrewd business man at once perceived that he must take advantage of the Municipality discountenancing the erection of pendals in the Kumbargundi and its immediate neighbourhood for amusement purposes and discontinuing issuing license for this purpose and he lost no time to make the best of the worst bargain by getting a license for constructing a permanent building for the stage

7 A glance at the sketch prepared by the Chief Officer will show that the sites of Mr Sundaram Iyer are situated close to the conservancy lane of the Big Brahmin Street, in fact, abutting the conservancy lane in such a manner that from one end to the other latrines form the southern boundary thereof Besides, the latrines, on the western extremity is the big storm water drain containing the sewage water and all the filth of the Big Brahmin Street and to the north is a narrow street running on the fringes of the Kumbara Keri, while to the east is the Krishnarajpet Street It will thus be seen that the environments are unhealthy and insanitary to the greatest degree During nights the poisonous gasses emanating from the latrines and the sewage drain on the one hand, [illegible] germinating in Kumbargundi and other cess-pools on the other, are sure to produce very injurious effects on

and sleep resort to the theatre house for amusement

8 As soon as I came to know of this, I took strong objection to the injudicious act of the Building Committee and expressed strong disapproval of the same I refused to grant the license under the Police Regulation unless and until the Medical Officer gave his decisive opinion The District Medical Officer mentioned some conditions preparatory to the granting of license, admitting that the locality was insanitary A license was granted by the First Class Magistrate, but very soon it had to be suspended on the representation of the District Medical Officer Some of the conditions imposed by the District Medical Officer are more or less unworkable so far as Mr Sundaram Iyer is concerned Mr Sundaram Iyer has no control over the chain of latrines which belong to others and he cannot exercise any supervision over the cleaning operations of those latrines The Big drain which serves the purpose of carrying both storm water and sewage is stagnated with filthy water in the absence of any sort of drainage arrangements existing in the Shimoga Town The theatre is condemned for four months during the year as it is situated in the flooded area and that the locality would be swampy during the rainy season The District Medical Officer suggests that even after the expiry of rainy weather the theatre should be inspected before it is pronounced fit to be thrown open for amusement purposes It is therefore obvious that the place is quite unsuited for being used as a public house The Building Committee was not justified in granting this license against the spirit of the Resolution passed by the Council reserving a plot of ground for amusement purposes

9 During the season the Municipality received Rs. 150/- as ground rent from the dramatic companies which gave performances to the public and the audiance very much liked the place during the hot weather as it was situated on an eminence in a healthy and open place not far from the town It will be nothing short of an inhuman act to force large gatherings of ignorant people to

24

-----to huddle together in the temporary theatre of Mr. Sundaram Iyer for inhaling the poisonous gasses which will injure their health and ruin their constitution The Municipal Council have not approved the action of the Building Committee It will be seen from the report of the Chief Officer that Mr Sundaram Iyer has made no attempt to raise the permanent structure though the period of licensehas expired, nor did he apply to extend the time The basement and foundation were constructed by him as already pointed out in the year 1921 when he first applied for permission to build a dwelling house

10. His idea seems to be to have a temporary theatre for the purposes of leasing it out to the dramatic companies as the Municipality condemned the place close to his sites in Kumbargundi where theatrical companies were permitted to erect pendals for giving their performances to the Public He would have had no chance, if the old place had been retained for being used by the theatrical companies In fact the former plot of ground is more open and far away from the filthy surroundings

11 Mr Sundaram Iyer, in spite of being told that his request cannot be granted appears to have applied to the First Class Magistrate for granting him license mentioning therein that he will have the Sirsatti Dramatic Company to give performances, knowing full well that the latter Co , have already taken up the Municipal site reserved for this purpose on payment of Rs 100/- as ground rent and have constructed a spacious pendal and commenced their entertainments for the season

12 It is therefore very desirable to place these facts on record and take formal action for vetoing the action of the Building Committee in granting a license to Mr Sundaram Iyer for the following reasons

1) The locality is situated [illegible] zone

25

c) The granting of license is in defiance of the directions of Government laid down in their Order No R 1020-1428/Fin-4-54 dated 8th August 1954 Flag O

d) It is against the spirit of the resolution of the Municipal Council

e) It will affect the revenue of the Municipal Council

f) It will cause great injury to public health by allowing the ignorant people to assemble almost unhealthy and in unsanitary surroundings

For the foregoing reasons I feel incumbent to prohibit the temporary theatre erected by Mr Jagannatham for showing films as a place of amusement in the exercise of the controlling power vested in me under section 74(1) of the Municipal Regulations

The entire records accompany for kind perusal & return

I have the honour to be

Sir

Your most obedient servant

Deputy Commissioner

Shimoga District

Conf[illegible] 26

Pherist to accompany the records relating to the grant of a license to Mr H Sundaram Iyer for constructing a theatre house, on his sites Nos 851 852 & 853 in the Krishnarajapur Street, Shimoga Town

****

		Pages in the file
1	Records received from the Town Municipal Office	
2	Chief Officer's report with plan	
3	Memo dated 16th March 1926 from the Deputy Commissioner & President of Shimoga Town Municipality with two applications for licenses to erect pendals on the Municipal sites for staging dramas	
4	License Records received from the pecial Firs Grade Magistrate ir repsect of License No 13 of 25-26 issued to Gadag Dramat c Company	

Confidential

pp.F VI GL]

B650

SUBJECT

Diary No. of letter replied to 6017

General and Revenue Secretariat

( )

, the 192

Date of issue 11/5/26

Signed by K T K S

List of enclosures

Copied by

Examined by

Section Mil

File No. 97-25

Serial No. 7

No. 16895

To The Deputy Commr.
Shimoga District

Sir,

With reference to your confidential letter No C 651/25 26 dt 23rd April 1926 regarding the vetoing of the resolution of the Building Committee of the Shimoga Municipal Council granting a licence to Mr Sundaram Iyer for constructing a fresco theatre and forbidding the use of the temporary theatre constructed by him as a place of amusement I am directed to state that the order

over

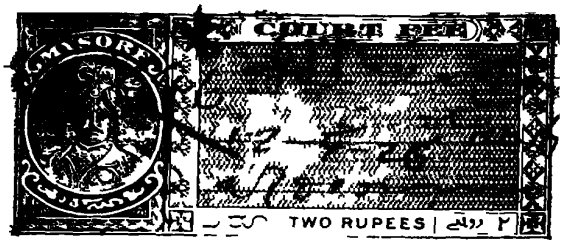
passed by you in the matter
under sub Section 2 of Sections 174
of the Municipal Regulations, if any
is awaited.

I have the

for L & L Sec'y to Govt.

Letter No 1(-)11

29



6267

MC 97-25 14/5/26

To
The Second Member of Council
Government of His Highness the Maharaja of Mysore
Bangalore

The humble petition of Harakere Sundaram Iyer Timber Merchant Shimoga respectfully showeth

1 That the petitioner is a land-holder timber merchant an elected Municipal Councillor member of the District Board and also a Bench Magistrate in the Town of Shimoga

2 That the petitioner is the owner of a site in Krishnarajpura Street Shimoga whereon with the permission of the Municipal Council theatres were built some years back and dramas also were enacted

3 That from the time when the site was purchased by the late Harakere Ramappa, the father of the petitioner, it was used by him and by the petitioner as a workshop for some years Lately at the suggestion of the public the petitioner shifted the workshop to a separate place and constructed a permanent theatre on the site at a great cost, after duly obtaining a license therefrom the Municipal Council The stage is built on a stone-revetted foundation about two feet above the level of the ground and the hind part, meant for the public is raised to a height of about 5' above the ground level, with gentle slope towards the stage The theatre has got a sufficient space left free all-round it and it has got Government roads on three sides and the surrounding area is inhabited by people

4 That in the course of its construction, after the grant of the license, the present Deputy Commissioner at the request of the petitioner was pleased to inspect it on or about 25-10-25

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in the presence of the Petitioner. But he did not express any disapproval either orally or in writing as to the construction of the building or as to its use as a permanent theatre. The Local District Medical Officer and the Sanitary Officer also inspected the spot and approved of the theatre being constructed there The work was commenced on or about 5th October 1935 and brought to a close on or about 17th November 1935 The petitioner herewith files an affidavit to the above facts

5 That after the completion of the theatre, the Dathathreya Dramatic Company of Gadag obtained a license for enacting dramas in the said theatre from the Special First Class Magistrate, Mr Sadasiva Rao, B A , B.L , who granted the same after taking the opinion of the Local District Medical and Sanitary Officer in writing about the suitability of the locality and the building. Some dramas also were enacted But in the meanwhile plague broke out in the town and some cases occurred in the vicinity of the building. And hence the license was temporarily suspended at the suggestion of the District Medical and Sanitary Officer, till the epidemic subsided Now that the town, as a whole, was free from the plague epidemic, the District Medical and Sanitary Officer has been pleased to withdraw his restriction and has forwarded his opinion to the present Special First Class Magistrate, Mr Lakshmana Rao, B.A., B L , at Shimoga, recommending the issue of the license for staging dramas in the petitioner's theatre

6 That in March 1936, the Proprietor of The Birehatti Dramatic Company visited the Deputy Commissioner and expressed to him his desire to enact some dramas in the petitioner's theatre The Deputy Commissioner in reply, it appears, asked him to have his own theatre built in a separate place and in case he applied for a license to stage dramas in the petitioner's theatre alone, he would see that no license was issued to him for the same. That on hearing this, the petitioner approached the Deputy Commissioner personally and represented to him that the theatre was built at

the

the suggestion of the public and by the unanimous approval of the Building Committee of the Municipality consisting of :-

Messrs 1 P Venkappaiah,
Vice President, Municipal Council,
2 H Lingappa, B A , LL D ,
Advocate,
3 G C Mahalingappa,
General Merchant,
4 S Abdul Gani,
General Merchant,
5 K Venkatarayappa,
General Merchant,

The petitioner further drew his attention to the fact that he invested more than Rs4000/- (excluding the cost of the stone revetted foundation and basement) for the construction of the permanent theatre and that he would be put to a heavy loss in case a license was not issued for the performance of dramas The petitioner also requested him to inspect the theatre once again if necessary The Deputy Commissioner was not pleased to give the petitioner a patient hearing. He treated him with utmost indifference and in the end curtly said that he would not allow the issue of a license for staging dramas in that theatre and the petitioner might not discuss with him any more in the matter This cold treatment of the Deputy Commissioner for reasons best known to im alone, but not on any just and reasonable grounds, pained the petitioner very much.

7 That the petitioner being so disappointed applied to on 3-4-1926
the Special First Class Magistrate, supported by the application of the town's people signed largely by the prominent members of the Bar, unicipal Councillors, Merchants and Representative Citizens of all castes, for the issue of the license for enacting dramas in the petitioner's theatre The petitioner herewith produces the copy of enclosed letter of Mr.A. Ananthiah, Pleader (Municipal Councillor, Member of the District Board and Member of the Representative Assembly

Assembly) which was addressed to the petitioner in connection with the Sanitary conditions etc ,of the theatre Subsequently the District Medical and Sanitary Officer also sent in his opinion to the Special First Class Magistrate that the license might be granted for the performance of the plays On this the Magistrate requested the Deputy Commissioner to send back the papers connected with the grant of the previous license which the Deputy Commissioner had taken away from the First Class Magistrate's Court for his perusal But the Deputy Commissioner for reasons best known to him,with a view to cause loss to the petitioner,delayed sending the papers to the Magistrate And the anxious petitioner was informed by the Special First Class Magistrate,on enquiry,that no order could be passed on the application of the petitioner until the said papers were sent back to his Office by the Deputy Commissioner The petitioner waited for a sufficiently long time,i e ,till 3-5-26 The Special First Class Magistrate did not pass any orders on his application as there was delay in sending back the papers to him Finding that there was an intentional delay on the part of the Deputy Commissioner in sending the papers to the Magistrate to the prejudice of the petitioner, the petitioner humbly submitted another application to the Special First Class Magistrate to which he gave the petitioner an endorsement in writing refusing to grant the license,on 6-5-1926, the copy of which is herewith filed This endorsement reached the petitioner on 7-5-1926. The petitioner has applied for the copies of the Deputy Commissioner's order referred to in the endorsement,on 8-5-1926, which has not yet been granted to the petitioner The petitioner is quite in the dark as to what the Deputy Commissioner has written to Government and the grounds on which he bases his report,and as such the petitioner is not now in a position to meet his arguments but the petitioner will be in a better position to satisfactorily meet all his experts' statements and to convince the Government that the Petitioner is justly entitled to the support of the Government when a copy of the Deputy Commissioner's report to the Government is given to the petitioner and the petitioner is heard on that The petitioner has also put in an application for the copy of the Deputy Commissioner

full report, confidential or otherwise, made to the Government, to the Government to-day, and he hopes and trusts the Government will grant the petitioner the copy applied for in the ends of justice.

8 That the recorded opinion of the public of Shimoga consisting of most of the senior advocates, municipal councillors, merchants, land-holders, representative citizens of all castes and the leading men of the town and the opinion of the District Medical and Sanitory Officer will clearly show to the Government that the locality and the permanent theatre built thereon at considerable cost by the petitioner are well-suited to stage dramas on sanitary and other grounds and that the action taken by the Deputy Commissioner, in spite of all these, and at this late stage, spells of mere prejudice against the petitioner with the intention of causing substantial loss and injury to the petitioner for reasons which the petitioner is constrained to omit in this petition and which may be set out in detail, if needed, when enquiry is held The petitioner finding that no relief can be had locally and before taking legal measures, humbly seeks the help of the Government in this matter.

9 That the Municipality issued a license to the petitioner to build a theatre on the said site on 28-9-1935 Thereupon the petitioner built it at a great cost. This theatre is in the centre and convenient portion of the town and the town's people have no manner of objection to it That the Municipality has been issuing licenses for the erection of new buildings in the vicinity and that buildings have sprung up in its vicinity even after the floods, and that the permanent structure of the said theatre with proper license by the Municipality, commenced and completed to the full knowledge of the Deputy Commissioner, without his taking any timely action to stop the structure or to cancell the license duly granted by the building committee immediately, and that the license for staging dramas was also granted by the Special First Class Magistrate with the opinion of the District Medical and Sanitary Officer and dramas were once conducted therein without

without any objection from the public or the Deputy Commissioner, and even now the opinion of the public and the District Medical and Sanitary Officer, as set forth above is in favour of the petitioner's contention and that these dramas ~~y~~ are played only during special seasons and favourable weather but not always, will not fail to convince the Government, that the action of the Deputy Commissioner now taken is anything but fair, just and unbiassed

10 That the action of the Deputy Commissioner in vetoeing the license at this stage is erroneous and unjust, and against law as section 174 clause(1) of the Municipal Regulation relied on by him is not applicable to the present case for the reason that there is no likelihood of causing injury or any breach of the peace if dramas are staged in the theatre, and for the reason that the building is not under construction, but was completed long, long ago as set forth above, to the knowledge of the Deputy Commissioner

11 That from the attitude of the Deputy Commissioner and from the treatment he gave the petitioner in this connection, the petitioner presumes that the Deputy Commissioner, in order to gain his unjust end, might have written to the Government something against the petitioner regarding the theatre, petitioner has built at considerable cost The petitioner fully believes that the action of the Deputy Commissioner in this connection is due to great prejudice and with intention of doing harm and causing heavy and substantial loss to the petitioner and without realising the legal consequences thereof For the above reasons the petitioner humbly prays that if the Deputy Commissioner has really written anything against the petitioner as supposed by the petitioner, the petitioner may be kindly given an opportunity of explaining himself to the Government on the points referred to by the Deputy Commissioner, either personally or through his counsel, before passing any order thereon

12 That the petitioner further ~~xxxx~~ prays that all the records including the recorded opinion of the leading public of the town and the opinion of the District Medical and Sanitary Officer which are to be found in the Special First Class Magistrate's Court ~~xxx~~ as well as the license formerly granted by the predecessor of the

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the present First Class Magistrate supported by the opinion of th District Medical and Sanitary Officer, may kindly be sent for and after the perusal thereof, and after hearing the petitioner or hi counsel, the Government may be pleased to pass an order, setting aside the order of the Deputy Commissioner and that of the Speci First Class Magistrate and kindly order the issue of the license prayed for, ~~xxxxxxx~~ for allowing the petitioner to use the said building as a Dramatic Theatre and as a place of amusement as originally intended, and thus save the petitioner from the heavy loss, the petitioner would otherwise be put to

The petitioner humbly begs to remain,

Your most obedient and loyal citizen,

H H Sundaracharlu Jr.

12 5 1926

26

A. Ananthiah,
First Grade Pleader

Shimoga, 1/3/1926

Member, Municipal Council.

****

My Dear Mr. H S Aiyar

Your letter to hand I plainly tell you I had no time to meet the Sahib I will meet him and tell him about the Theatre

I am hopeful to convince him that the license could be given these summer months I have seen the Theater and there is no necessity to see it again You have spent a good lot of money in keeping the surrounding as clean as possible The sanitary arrangements are as could be desired In my opinion, there cannot be any valid ground to refuse the license for playing dramas in your theatre in the summer season.

What about your applying for a site just opposite to the [redacted] Bank There is every possibility of your getting the [redacted] if you press the matter In course

of time that becomes the centre for the Town.

More in person,

Yours Sincerely,

Sd./- A Ananthiah.

" C O P Y "

Office of the Special I Grade Magistrate,

Shimoga

No 733/25-26
Dated 24th April 1926

ENDORSEMENT

With reference to his application dated 3-4-1926 for the grant of a license for playing dramas in the theatre constructed by him in the Krishnarajapura street of Shimoga town, Mr H. Sundram Iyer is hereby informed that as the Deputy Commissioner has under section 174 (1) of the Municipal Regulation vetoed the license for constructing a permanent theatre and forbidden the use of the theatre as a place of amusement, no license can be granted

Sd/C. Lakshmana Rao

Special I Grade Magistrate,

Shimoga

Date on the Envelope
6-5-1926

"Copy"

29

In the Office of the Secretary
Local Self Government and Legislative Department,
B A N G A L O R E

Petitioner Ramakara Sundaram Iyer,
S H I M O G A.

The petitioner solemnly affirms :-

1. That the Deputy Commissioner of Kadura District at the request of the petitioner, inspected the petitioner's theatre, referred to in the annexed petition, in the presence of the petitioner on or about the 28th October 1925 when it was under construction.

2 That it was brought to his notice by the petitioner that a permanent theatre would be built and that he did not express any disapproval either orally or in writing as to the construction of the building or as to its use as a permanent theatre. That the local Medical and Sanitary Officer also inspected the spot and approved of the permanent theatre being constructed thereon

Shimoga. 11 5? 1926

Sworn before me this 5th day of May 1926

and

Confidential

O C 651/25-26
Fnc One

Office of the Deputy Commissioner
Shimoga District
Dated Camp Honnali 15th May 1926

From

A K Syed Taj Peeran Esq B A
Deputy Commissioner Shimoga District
Shimoga

B Nagappa Esq Bar-At-Law
Secretary to Government
Local & Legislative Departments
Bangalore

Sir

With reference to your confidential letter No 65 5 dated the 1st 11th instant re vetoing of the Resolution of the Building Committee of the Shimoga Municipal Council granting a license to Mr H Sundaram Iyer for constructing a pucca theatre &c I have the honour to enclose a copy of my order issued under Section 174(1) of the Municipal Regulation as desired in your letter under reply The same was, by mistake, not submitted along with my report already submitted

I have the honour to be
Sir,
Your most obedient servant

Deputy Commissioner
Shimoga District

41

Confidential

Office of the Deputy Commissioner

Shimoga District

ated Shimoga 17th April 1926

ubject --

Resolution of the Shimoga Town Building Committee dated 24th September 1925 re the entertainment of an application from Mr H Sundaram Iyer for the grant o a licerse to construct a eatre or sites bearing Municipal Nos 81 80 and 80 in the Krishnarajapur Street

Order thereon

On the perusal of records connected with t is ar lication and ving regard to the local circumstances the Deputy Commissioner Shimoga District is convinced that grant o permission for gathering large crowds of people in the temporary theatre constructed by the above named gentleman, causes injury to the public health and s uch he feels incumbent to vetoe the Resolution of the Building ommittee granting a license for constructing a permanent theatre nd forbids the use of the temporary theatre as a lace of amusemen n exercise of the powers vested in him under Section 174(1) of the nicipal Regulation for the following reasons --

(1) The locality is situated in the danger zone
(2 The granting of a license is in defiance of directions of Government laid down in their order No H 1020-1228 R M 3-24-54 dated 8th August 1924
(3) It is against the spirit of the Resolution of the Municipal Council
(4) It will affect the revenue of the Municipal Council
(5) It will cause great injury to public health by allowing the ignorant people to assemble amidst unhealthy and insanitary surroundings

Sd/ A K SYED TAJ PEERAN
Deputy Commissioner
Shimoga District

"Copy"

Deputy Commissioner
Shimoga District.

α 42 ml 9 7 W 2 S-tS

To
The Deputy Commissioner,
Shimoga District

(copy) en behalf
of Records,
Dated 6/7/26

Sir,

With reference to the correspondence ending with your letter No O C 651/25-26 dated 15th May 1926, regarding the cancellation of the resolution of the Building Committee of the Shimoga Municipal Council granting a license to Mr Sundaram Iyer in Shimoga town for constructing a pukka theatre and forbidding the use of the place as a place of amusement, I am directed to forward herewith the accompanying petition dated 12th May 1926 from the said gentleman appealing against the order refusing the grant of license and to request that a further full report may be furnished in the matter with reference to the statements contained therein

Ordinarily the power of a Municipal Council itself extends only to the prevention of construction of buildings when they do not comply with the provisions relating to level, drainage, sanitation etc , and not to the restriction of any building for being used for the trical or other purposes One of the grounds urged for issuing order under Section 174(1) is that in G O No R 1020-1288/R I 3-24-54 dated 8th Aug 1924 Government have ~~instructed~~ prohibited the issue of license by District Boards and Municipal Councils for rebuilding houses in flood areas under which category the place now in question is said to fall The notification must be considered to have been issued under Section 149 of the Municipal Regulation which says that in specially notified areas special powers may be exercised by Municipal Councils for preventing the erection of any building for any of the

spec (a) to (d)

of clause (1) thereof, under clause (2) (a) of Section 149, the Municipal Council may require the owners to pull down or remove the building or take such action in connection therewith as the Municipal Council deem necessary to prevent all risk of disease

Under clause 2(b), the Municipal Council themselves or other agency can pull down the building when the owner neglects to do so with a specific period The proviso to the said clause however requires that in every such case compensation shall be paid to the person whose rights are affected thereby It is not known whether the Municipal Council will be prepared to pay compensation if any claimed by the owner

I am therefore to request you to consider the above circumstances and ~~enquire~~ how the sit~~ion will be met and whether it~~ is not possib~~ to come to some arrangement with Mr Sundaram~~

I er

The records received with your letter are also returned herewith

I have etc

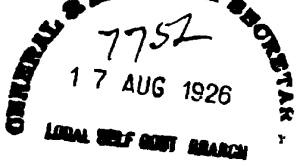
Sec'y to Govt L L Depts

No C C 651/25-26
Enc 9 Fairst attached

OFFICE OF TH DEPUTY COMMISSIONER
SHIMOGA DISTRICT

Shimoga, Dated the 14th August 19 26

CONFIDENTIAL



From

A K Syed Taipeeran Esqr B A,
Deputy Commissioner
Shimoga District

To

Ml 97-25

B Nagappa Esquire Bar-at-law

Secretary to Government
Local & Legislative Departments
B a n g a l o r e

Sir

With reference to your letter No L 42/Ml 97- 5-65 dated the 6th July 1926 asking me to furnish Government with a full report with reference to the statements contained in a petition presented by Mr H Sundaram Iyer enclosed therein and to report the final decision of the Municipal Council Shimoga in the matter, for the information of Government I have the honour to state as follows :-

2 As has already been explained in my detailed letter dated the 10th/23rd April 1926 on the above subject the foundation and basement of the structure in question were constructed by him in 1921 The superstructure recently put up is only made of thatties and zinc sheets and is not a permanent building as suggested in Mr Sundaram Iyer's letter This is clear from the report of the Chief Officer dated 7th April 1926 (copy enclosed) which shows how much of the building was built before the floods and how much built recently

3 As for the nature of the locality in which the theatre is built I have already submitted with my letter a sketch prepared by the Chief Officer which shows that the site in question is situated close to the conservancy lane of the Big Brahmins street and that several latrines form the southern boundary of the site I have also shown in that letter how the environments are all unhealthy and insanitary and how the [illegible]

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health of the persons attending dramatic performances which will always held at nights, likely to be injuriously affected

4 The allegation made in para 4 of Mr Iyer's petition that after inspection of the spot in October 1925 I did not express any disapproval either orally or in writing is incorrect Not only did I draw the attention of Mr Sundaram Iyer to the sanitary condition of the surroundings during the inspection but I also recorded my observation to that effect in my inspection notes dated 20-10-1925 (copy enclosed) The structure now put up over the foundation and basement already in existance since 1921 - is only temporary one and not a permanent and substantial one Otherwise it could never have been constructed within the few weeks referred to in para 4 of his letter

5 I am not aware of the District Medical and Sanitary Officer having at any time approved of the theatre being constructed there as alleged That officer was also of opinion that before the license could be granted certain conditions should be fulfilled It may be observed that these conditions are not such, as are likely to be fulfilled by Mr Sundaram Iyer

6 The Dattatraya Company however obtained a temporary ~~xxxx~~ license from the local Magistrate for giving performances in the theatre but the permission had to be withdrawn on the recommendation of the Sanitary Officer as by that time plague broke out in the locality Which was only a confirmation of my apprehensions I had no intimation of any later withdrawal of those objections from the District Medical and Sanitary Officer but I learnt that some such communication was sent by him to the First Class Magistrate Shimoga, on the 10th April last I got a copy of his demy official communication to the First Class Magistrate Shimoga after requesting the Medical Officer in my letter No O C 651/24-25 dated 10-7-1926 (copy enclosed) This withdrawal cannot however take away the effect of the views already expressed by that Officer and of the conditions laid down by him in the interests of health and sanitation

It is alleged that the Building Committee have

unanimously approved of the construction of the theatre and that several leading inhabitants have also expressed the same views in their application I have not seen the application It is, however,needless to point out that signatures are easily obtained by making personal appeals to people who cannot,except by proper investigation, form a clear idia of the situation The members of the Building Committee do not also appear to have carefully considered all the aspects of the question before recording their views on the subject

8 As my letter referred to above already contains all the material facts of the case it is needless for me to reiterate them here All that I wish to emphasize is that after a careful consid -eration of the matter and in pursuance of the direc ions issued by Government for the guidance of Officers of Government and of local bodies in Government Order No R 1020 1228/R M 3-24-54 dated the 8th August 1924 to the effect that construction of buildings in areas damaged by floods should not be permitted and in view of the dirty and insanitary surroundings and of the danger to whic persons spending the greater part of the night in a crowded build- ding in such surroundings would be exposed to I felt that there would be no justification for permitting the construction of a permanent theatre in such locality and I accordingly took action under Section 174 (1) of the Municipal Regulation It was not in consequence of any prejudice because there was obviously no ,occa sion for any but it was any, but it was in the best interest of the public that I felt bound to pass the order

9 The order of tGovernment referred to above viz No R 1020-1228/R M 3-24-54 dated 8th August 1924, does not purport to have been passed under Section 149 of the Municipal Regulation and the action proposed to to be taken is not also under that Section The order passed by me suspending the resolution of Building Committee and forbidding the use of the temporary theatre was not passed by me in any capacity as the President of the Municipal Council but only as Deputy Commissioner I do not think that the Municipal Council intended to mull down the-

47

temporary structure already constructed nor does the present financial condition as contemplated by the proviso to Section 149 (2)

10 Under the circumstances I consider that it is unnecessary to place the matter again before the Municipal Council for the Building Committee to whom the power of the Council have been deligated, have already exercised their functions and issued the license in exercise of the powers vested in them

11 In view of the opinion expressed by the District Medical Officer it was incumbant on the Municipal Council to have prescribed such conditions as may be deemed necessary as to the use to which the owner make or permit thereof In the present case the owner intends to use as a theatre, where a large number of people congrigate and spend the greater part of th night a tempora ry structure surrounded on all sides by thatties in an insanitary locality It is very inexpedient to allow large gatherings without sanitary precaution being taken in the matter of promoting health and safety of the public

12 According to the spirit of the Medical opinion the building must be of a permanent structure , so built, as to avoid the bad smell coming out of latrines and sewage drains close -ly situated being entered into theatre hall to endanger the healt of the play-goers, and it should be periodically inspected to see its stability of the building and to see that it is well ventilated According to this opinion, unless the walls of the building are sufficiently raised to the hight of at least 25 feet so as to have windows sufficiently high to admit pure and uncantaminated air under section 149, if the petitioner had put up a substantial structure with pukka walls and with sufficient arrangements for good ventilation instead of putting the tatties admitting impure and poisonous gasses I would not have moved in the matter

13 The District Medical Officer who withdrew the objection on the ground of the cessasion of the plague epedimic locality, does not seem to have satisfied himself before doing so. all the conditions imposed by him in his first certificate

had been fully carried out

/4 In conclusion I submit that as the representative of Government I exercise the powers of vetoing resolution of the building Committee with the best of the intentions in the interests of public health and welfare

/5 Under the circumstances I request that you may be so good as to place the entire matter before the Government for such orders being passed in the matter as they deem fit

/6 The petition of Mr H Sundaram Iyer received with your letter under reference is herewith returned with other records

I have the honour to be

Sir

Your most obedient servant

Deputy Commissioner
Shimoga District

SKN

G R. S III—3]

ROUTINE NOTES.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

In all future Correspondence please quote No. C.C. 651/23-26

Confidential

26. JAN. 1927

OFFICE OF THE DEPUTY COMMISSIONER
SHIMOGA DISTRICT

Shimoga, Dated the 24th January 1927

Dear Sir,

I write to invite kind reference to this office confidential letter No O C 651 dated the 14th August 1926, re the temporary theatre constructed by Mr R Sundaram Iyer, in the Krishnarajapur Street, Shimoga Town I request you to be so good as to kindly return the records sent as enclosures to the letter referred to above, for further action, with such instructions as the Government may be pleased to issue in the matter

Yours sincerely,

B Nagappa, Esq , Bar-at-Law ,
Secretary to Government,
Local & Legislative Departments,
Bangalore

N. B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

G R S III—8]

ROUTINE NOTES

[To be used only for notes requisitions etc not intended for permanent record]

340

Confidential

Office of the Deputy Commissioner,
Shimoga District
Dated Shimoga, 30th January 1927

DEWAN'S OFFICE
O C 651/25-26
1 FEB 1927
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Dear Sir,

In continuation of my Confidential D O letter No O C 651/25-26 dated the 24th instant, requesting to return the connected records relating to the theatre constructed by Mr H Sundaram Iyer, in the Krishnarajapur Street, Shimoga Town, I write to state that the Dewan Sahib during his visit to Shimoga, inspected the theatre in question and was pleased to give me certain instructions in the matter He was of opinion that there need be no objection to permit the owner of the theatre to use the structure put up by him for - dramatic performances provided the owner undertook to effect certain improvements to the thmatre pandal by making it fire-proof as far as possible and arranged to keep the surrounings in a sanitary and tidy conditions In view of the foregoing instructions, I sent for Mr Sundaram Iyer, the owner, and told him that he should carry out the instructions given, before the building is used for the purpose mentioned Mr Sundaram Iyer readily agreed to carry out all the improvements which the authorities require to be carried out but prayed that a temporary license may be issued to him for this season, as the income derived during this period would all be spent on the improvement of the building and its surroundings He is also prepared to execute a Muchalika to this effect He has already cleared the surroundings of rank vegetation and marked the uneven positions behind the theatre He has planted some flowers plants in the enclosure and is carrying out some repairs to the drains It is thus seen that he is in earnest to carry out the improvements suggested by the local authority and in view of this I think a temporary license may be granted to him

51

to use the building for theatrical performances, subject to the condition that the improvements to the theatre mentioned should be completed in six months Mr Sundaram Iyer suggests that if he fails to carry out the instructions issued by the Government the permit need not be renewed In these circumstances I would recommend the withdrawal of the previous orders and granting of a temporary permit The records may kindly be returned with such instructions as the Government may deem fit to send in the circumstances reported now

Yours sincerely

[signature]

Diwan Bahadur
Secretary to Government
To the Legislative Departments
Bangalore

y vi. ol.]

BJECT.

Section
File No. 97-25
Serial No 15

ary No. of letter replied to 38742

No L 5444

Circle Record

To

The Assistant Collector
Shimoga

General and Revenue Secretariat
(L-S 7)
the 192

Dated Sir,

Date of issue 14-2-27.

With ref to the Correspondence
ending with your Endt No C1 & M No 6 61/25-26 dt 30th Jan 1927 relative
to land transfer Conducted by Mr. K
Sundaram Iyer in the Kadinamane
Grant Shimoga, I am directed to
request that in the circumstances
stated in your Endt under reply
the provisional pattn may be withheld
and that a temporary license
may be issued to Mr. Sundaram Iyer
Iyer to cut the standing
for theatrical performances only

Signed by..

List of enclosures.....

Copied by.. .....

Examined by.....

other

WD 01265—GTS—61,000—24-12-25

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to the conditions specified by you at Nuwaraeliya in a suitable form may be caused to be executed by the owner licensee for the fulfilment of the conditions attached to the license issued by you.

The Connected Records are herewith despatched.

Thanking you

Yours faithfully

Sd/

for Government Agent

To B. D. Kesaparanjan Esq.
Asst Govt Agent Dist

Nuwaraeliya
3/4/29

O P I N I O N

The facts of the case are briefly as follows --

Mr H Sundaram Iyer applied to the Municipal Council Shimoga on 12th September 1925 for a license to build a theatre on his sites in the Krishnarajapur street, Shimoga The building committee issued a license by their resolution dated 28th September 1925 The Deputy Commissioner inspected the locality on 21st October 1925 and in the - - - - Inspection Notes has recorded as follows --

"It is further learnt that a license has been given for erecting a Pendal in Kumbaragundi for dramatic companies This license should not have been given particularly as Plague is raging in the town and the locality is so unhealthy Nowhere - - excepting near the Industrial workshop license should be given for this purpose " In passing, it may be remarked that these notes do not state that the license already granted should be cancelled After the building was completed, the petitioner seems to have applied to the Special First Grade Magistrate for a license for enacting dramas The latter officer consulted the District Medical Officer about the suitability of the site of the theatre from the sanitation point of view and the District Medical Officer on 7th November 1925 suggested that the license may be granted on the following conditions -

(1) As the locality is not in a very Sanitary condition the precincts of the theatre should be cleaned up of all rank vegetation &c

(2) The drains to be cleaned

(3) The license should be withdrawn for nearly three months in the year during flood season (June to August) as the theatre is in danger

(4) The stability of the building must be tested every year by a competent authority after the flood season

(5) Sanitary urinals and latrines with arrangements for proper cleaning must be provided.

A license seems to have been granted and a few dramas also staged.

2 Subsequently on the 20th November 1925, the District Medical Officer wrote to the Special First Grade Magistrate that as Plague was virulent in Krishnarajapuram street the license might be withdrawn till better conditions prevailed and the license was accordingly suspended Later, On 10th April 1926, the District Medical Officer intimated to the Special First Grade Magistrate that as the conditions had improved and Plague had subsided, the objection to issue licenses to enact dramas in Mr Sundaram Iyer's theatre was withdrawn But before the First Grade Magistrate acted on this, the Deputy Commissioner in exercise of the powers vested in him under Section 174(1) of the Municipal Regulation passed orders on 17th April 1926 in regard to the license granted by the building committee vetoing the resolution of the Building Committee granting a license for constructing a permanent theatre and forbidding the use of the temporary theatre as a place of amusement for the following reasons.—

(1) The locality is situated in a danger zone

(2) The granting of a license is in defiance of directions of Government laid down in their order No R.1020-1228 R.M 3-24-54 dated 8th August 1924

(3) It is against the spirit of the Resolution of the Municipal Council.

(4) It will affect the revenue of the Municipal Council

(5) It will cause great injury to public health by allowing the ignorant people to assemble amidst unhealthy and insanitary surroundings

3 The Deputy Commissioner has in his letter dated 23rd April 1926 forwarded to Government a copy of the order with a view to necessary orders being passed The party concerned has also sent up a memorial to Government appealing against the orders of the Deputy Commissioner.

4 The following questions that arise for solution in this connection have been referred by for opinion

(1) Whether the Deputy Commissioner's action is under the Police Regulation or under Section 174 Municipal Regulation.

(ii) Whether the order No R 1020-1228/ R M.3-24-54 dated 8th August 1924, requesting, inter alia, the Municipalities and the Local Boards to see that licenses are not issued for rebuilding the houses can be considered to have been passed under Section 149

(iii) Whether the order passed by the Deputy Commissioner is strictly correct so far as it purports to be in exercise of the - - - powers under Section 174 of the Municipal Regulation.

(iv) What exactly may be the orders that Government may pass having regard to all the circumstances of the case

5 As regards the first question the Deputy Commissioner says that he has acted under the powers vested in him by the Municipal Regulation The order of 17th April 1926 passed by him, a copy of which is in the file, also shows that the Deputy Commissioner acted under Section 174 The provisions of the Police Regulation in regard to the issue of licenses are contained in Sections 36(n) and 45 Section 36(n) is to the effect that the magistrate may from time to time make rules or orders regulating the entrance and exit of persons at theatres and every place of public amusement or assembly, the decent and orderly conduct of proceedings therein of the movement of persons, animals and vehicles at such times and such places at which in the opinion of the magistrate special regulations may be necessary for the public safety and convenience Under Section 45, the District Magistrate, any local magistrate, any Amildar or Deputy Amildar, may within the local limits of his jurisdiction regulate and control by the grant of license, the conduct of all assemblies and processions, the playing of music, the beating of drums, tom-toms or other instruments and the blowing or sounding of horns or other noisy instruments in or near a street

4 Having regard to the functions of the police and the powers vested in them by the Police Regulation it may well be doubted whether these sections have any application to the facts of the present case The main duty of the police is to maintain order and to prevent breaches of the peace With this view

these sections have been framed It may not apply to cases where a ~~[illegible]~~ play is intended to be played in an insanitary locality Under Section 133 of Criminal Procedure Code a magistrate has power to order the removal of a nuisance and to suppress any trade or occupation if it is injurious to the health or physical comfort of the community ~~When~~ though the occupation or trade ~~which~~ in itself not injurious to health, section 133 has no application to public nuisance being committed by the manager of an entertainment in the course of its conduct. Keeping the house of public entertainment is in itself not an unhealthy trade (see 47 P.R. 1888, 14 Mad 364) Such being the view of the law it is doubted whether any action can be taken either under the Police Regulation or under the preventive sections of the Criminal Procedure Code to prohibit the use of a theatre for public entertainments

As the Deputy Commissioner himself says that he has not taken action under Police Regulation it is unnecessary to dilate upon this subject

7 As regards the second question namely whether the Government Order dated 8th August 1924 was passed under Section 149 of the Municipal Regulation the Deputy Commissioner says that he does not base his contention upon the assumption that the said G O was passed under Section 149 of the Municipal Regulation. I have read the G O in question It only applies to houses that have been damaged by floods and the Government prevents reconstruction of such houses on their present site The

* Section 133 has likewise an explanatory note defining "public place" under the Regulation of 1899 page 62 Marg 8-1-

Government ~~Government~~ direct that the Local Boards and Municipalities with their areas and the Deputy Commissioners in others, will be requested to see that licenses are not issued for rebuilding such houses As there was no building formerly on this site which was damaged by floods, this G.O has no application to the present case In this view it is necessary to consider under what powers the Government have passed that G O

2 ~~As regards~~ The 3rd point ~~namely~~ whether the order passed by the Deputy Commissioner in this case is strictly correct so far as it purports to be in exercise of the powers vested in him under Section 174 of the Municipal Regulation Section 174 runs as follows

"If, in the opinion of the Deputy Commissioner the execution of any order or resolution of Municipal Council or the doing of anything which is about to be done or is being done by or on behalf of ~~the Government~~ a Municipal Council is causing or ~~xxxx~~ is likely to cause injury or annoyance to the public or to lead to a breach of the peace or is unlawful, he may by order in writing under his signature, suspend the execution or prohibit the doing thereof "

3 Sine qua non for the operation of this section are (1) the order or resolution of the Municipal Council should be such as to be capable of execution (2) that order should relate to the doing of anything which is abou to be done or is being done by or on behalf of a Municipal Council and (3) ~~that~~ the act complained of is one that is likely to cause injury or annoyance to the public It is necessary to see whether a permission or

license granted to a private individual to build a theatre is one coming under the operation of this section. The act of permitting a person though it may be called an order cannot in strict interpretation of the term "order" be construed a mandate by a superior authority over an inferior The very idea of an order imports a command upon another to do a certain act In the case of granting permission the grantee may or may not comply with the grant of permission i.e , it is left to the licensee either to build according to the order or to abstain from building In other words he does not allow himself to be charged for the violation of that order The wording of the order shows "is permitted" and not "shall erect" Hence such cases may not come within the purview of the order or resolution as contemplated in Section 174 Secondly, the underlying principle of the section is to prevent action contemplated to be done or not to be done and has no application to cases which have already been done There is one important element which ought to be considered in this connection All the acts contemplated under this Section are acts done by or on behalf of Municipal Council and not those done by private individuals upon their private properties Having regard to the fact that Deputy Commissioners are vested or clothed with authority to supervise the acts of the Municipal Council in their dealings with the public, it is submitted that the wording of the section should apply to acts done by or on behalf of Municipal Council for their own benefit in discharge of

the duties imposed upon them by the ~~xxxxx~~ legislature This may not have any effect upon owners of properties who are required to construct houses on their premises with the permission of the Municipal Council The permission is prescribed by bye-laws or rules framed thereunder with a view to prevent houses being built without sufficient ventilation &c There is no power vested in Municipal Council to refuse the owner of a building to make use of his building in a proper manner as that would be taking away the private right of a citizen In this view the ~~section~~ section has no operation to cases of licenses being granted to buildings.

9 The 3rd point is whether the building of houses or theatre even conceding it is built in an unhealthy locality is likely to cause injury or annoyance to the public within the meaning of section 174 The underlying principle enunciated by the legislature in enacting preventive sections and creating offences for committing public nuisances seems to be that the public contemplated therein is the people in general who dwell or occupy the property in the vicinity or persons who may have occasion to use public right i e ~~xx~~ the persons who have the ownership of their property or who have a right to use any public place are not to be injured by any act of a private individual Therefore this section has no application to generality of people who voluntarily court danger and go to a place which is built in an unhealthy place Therefore this section seems to have no application to the facts

of this case even on these grounds This view is held in G R.8267 dated 3rd Aug 1920 based upon the opinion of the Advocate General of Madras (See p 184 of Cummings Local Boards Manual)

10 The Deputy Commissioner has in all his communications urged that he has been acting with the best of intentions in the interest of public health and welfare. He considers that the construction of buildings in areas damaged by floods should not be permitted and that in view of the dirty and insanitary surroundings and of the danger to which persons resorting to the theatre would be exposed there would be no justification for permitting the construction of a permanent theatre in such a locality He relies upon the opinion of the Medical Officer that certain conditions should be attached to the grant of a license so that the sanitation and health of the theatre-goers may be assured and is of opinion that the building must be of a permanent structure so built as to avoid the bad smell coming out of the latrines and sewage drains closely situated, entering the theatre hall and that the building should also be inspected to see its stability periodically He has further stated that he would not have moved in the matter if the petitioner had put up a substantial structure with pukka walls and with sufficient arrangements for good ventilation instead of putting the thutties admitting impure and poisonous gasses If the Government are satisfied as regards the ing for making satis-

arrangements to obtain good sanitation about the theatre the only way in which they could give effect to it is by resorting to the provisions of Section 149 of the Municipal Regulation They may confer on the Municipal Council the power of requiring the petitioner to take the necessary action as suggested by the Deputy Commissioner to prevent the risk of disease and in the event of his not doing so to take such action themselves or by other agency In exercising these powers the Municipal Council may have to pay to the owner reasonable compensation for such damage as he may sustain unless the buildings now constructed, which is intended to be pulled down and altered has not been constructed in accordance with the terms of the license granted to him, in which case the Municipal Council will not incur any liability as by a breach of the terms of the license the owner will have forfeited all claims to compensation under Sub Section 3 of Section 149 This course would of course mean that the Municipal Council will have to find necessary funds for payment of compensation This cannot be helped in view of the strong opinion held by the Deputy Commissioner as regards the present state of sanitation and the danger to the health of the play-goers in the present condition of the existing building and its environments This seems to be the only possible solution under the circumstances

Bangalore
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